

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bright House Networks, LLC)	CSR 7054-E
)	
Petitions for Determination of Effective)	
Competition in Bradenton, FL (CUID FL0183))	

MEMORANDUM OPINION AND ORDER

Adopted: July 19, 2007

Released: July 20, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Bright House Networks, LLC (“Bright House”) has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(4) and 76.907 of the Commission's rules for a determination of effective competition in Brandenton, Florida. Bright House alleges that its cable system serving Brandenton is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act¹ and the Commission's implementing rules,² and therefore is exempt from cable rate regulation. Bright House claims the presence of effective competition in this area stems from the competing cable service provided by Verizon Florida Inc. (“Verizon”). Bright House further asserts that Verizon is a local exchange carrier that provides local exchange access services in Brandenton. No opposition to the petition was filed. Finding that Bright House is subject to effective competition in Brandenton, we grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1)(1) of the Communications Act⁴ and Section 76.905 of the Commission's rules.⁵ A cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that it does exist in its franchise area.⁶

¹ 47 U.S.C. § 543(1)(1)(D).

² 47 C.F.R. §§ 76.905(b)(4), 76.907.

³ 47 C.F.R. § 76.906.

⁴ 47 U.S.C. § 543(1)(1)(d).

⁵ 47 C.F.R. § 76.905(b)(4).

⁶ See 47 C.F.R. §§ 76.906, 76.907(b).

II. DISCUSSION

3. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a local exchange carrier (“LEC”) or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁷

4. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.⁸ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so; that no regulatory, technical or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.⁹

5. Bright House operates a cable television system in Brandon, Florida for which it seeks a determination of effective competition and, having been assigned the Community Unit Identification (CUID) number shown in the caption, qualifies as the incumbent cable operator within that franchise area for purposes of the “LEC effective competition test” at issue in this proceeding. Bright House provided information showing that the State of Florida has granted certificates for the provision of basic local telecommunications services by Verizon in Brandon.¹⁰ Therefore, Verizon qualifies as a LEC for purposes of the LEC effective competition test.¹¹

6. Bright House received a local cable franchise from Brandon in 2006 authorizing it to provide cable programming services throughout the community.¹² Undisputed evidence from Bright House shows that Verizon has completed construction of its system and now passes all households in Brandon. As Bright House also serves Brandon, this demonstrates that Verizon’s cable plant substantially overlaps Bright House’s service area.¹³ In addition to holding franchises for the provision of cable service within Brandon, Verizon has distributed press releases, local advertising, and marketing materials so that potential cable subscribers are broadly aware of the availability of their cable services and need only contact Verizon to obtain cable service.¹⁴

⁷ 47 U.S.C. § 543(l)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the “LEC” effective competition test.

⁸ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

⁹ *Id.*

¹⁰ Petition at 2-3 & Exhibit B.

¹¹ *See* 47 U.S.C. § 543(l)(1)(D); 47 U.S.C § 153(a)(1).

¹² Petition at 3 & Exhibit C.

¹³ Bright House submitted an affidavit from one of its employees as evidence that Verizon has completed construction of its system and passes all households in Brandon. Petition at 3-4, Exhibit D. No opposition to Bright House’s characterization was filed.

¹⁴ Petition at 4-5, Exhibits A & D.

7. The Verizon marketing materials show that its cable system offers over 160 channels of video programming that includes non-broadcast programming services such as ESPN, HBO, and CNN, as well as a complement of several local television broadcast stations.¹⁵ Based on this record, we find that the Verizon complement of programming services compares with the programming available on Bright House's systems¹⁶ and is sufficient to satisfy this aspect of the LEC effective competition test.¹⁷ Bright House also provided evidence that there are no regulatory, technical, or other impediments to Verizon's provision of service within Brandenton, and that Verizon is able to provide cable service that substantially overlaps Bright House's service area.¹⁸ Based on the foregoing, we conclude that Bright House has submitted sufficient evidence to demonstrate that its cable system serving Brandenton is subject to effective competition.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Bright House Networks LLC for determinations of effective competition in the City of Brandenton, Florida **IS HEREBY GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification to regulate the basic cable service of Bright House Networks LLC granted to Brandenton, Florida **IS REVOKED**.

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ Petition at 6, Exhibit A.

¹⁶ Petition at 6.

¹⁷ See 47 C.F.R. § 76.905(g).

¹⁸ Petition at 4. No party filed an opposition disputing Verizon's contention that technical impediments to the provision of service in Brandenton do *not* exist.

¹⁹ 47 C.F.R. § 0.283.